

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYMOND NG, *et al.*,

Defendants.

CASE NO. CR20-0172-JCC

ORDER

This matter comes before the Court on the parties' stipulated motion for a protective order (Dkt. No. 38). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby ENTERS the following PROTECTIVE ORDER:

1. **Protected Material.** For purposes of this Order, "Protected Materials" shall include (1) Grand Jury testimony; (2) witness statements; (3) tax information; (4) financial information; (5) subscriber information (including phone and utility subscriber information for third parties); and (6) other personal identifying information ("PII")<sup>1</sup> obtained during the

---

<sup>1</sup> "PII" includes, but is not necessarily limited to, the information identified in Federal Rule of Criminal Procedure 49.1(a) and includes full names, dates of birth, Social Security numbers (or other identification information), financial account information (including account numbers), tax information, driver's license numbers, addresses, telephone numbers, locations of residences or employment, medical records, school records, juvenile criminal records, and other

1 investigation, either via Grand Jury subpoena and/or during the execution of search warrants,  
2 including but not limited to personal information about a defendant and third parties (such as  
3 photographs, including sexually suggestive photographs of family members, a defendant, and/or  
4 witnesses) and other sensitive information obtained from the search of social media, cellular  
5 telephones, and other digital devices seized during the investigation (collectively, the “Protected  
6 Material”). All financial records (including phone, utility, and financial information for third  
7 parties), federal tax records, cellular telephone downloads, Grand Jury transcripts, and  
8 summaries of financial records provided during discovery will be considered Protected Material  
9 without further designation by the Government.

10 2. Other information believed by the Government to be Protected Material will be so  
11 designated by the Government. Said material may include, but is not limited to, information  
12 related to witnesses and third parties, criminal history reports, and related *Giglio* impeachment  
13 materials.

14 3. **Production of Protected Material to the Defense.** The United States will make  
15 available copies of the Protected Materials, including those filed under seal, to a Coordinating  
16 Discovery Attorney should one be appointed and/or directly to defense counsel to comply with  
17 the Government’s discovery obligations. Possession of copies of the Protected Materials is  
18 limited to the Coordinating Discovery Attorney (should one be appointed) and his/her staff,  
19 attorneys of record, and investigators, paralegals, law clerks, experts, and assistants for the  
20 attorneys of record (hereinafter collectively referred to as “members of the defense teams”).  
21 Further, the attorneys of record are required, prior to disseminating any copies of the Protected or  
22 Sensitive Materials to members of the defense teams, to provide a copy of this Protective Order  
23 to members of the defense teams, and obtain written consent from members of the defense teams  
24

25 \_\_\_\_\_  
26 confidential information. The Government has endeavored to redact PII as appropriate, but the  
parties acknowledge and agree that this will not always be possible, and that in some instances  
un-redacted PII may be necessary to the defense.

1 to be bound by the terms and conditions of this Protective Order. The written consent need not be  
2 disclosed or produced to the United States unless requested by the Assistant United States  
3 Attorney and ordered by the Court.

4       **4. Review of Protected Material by Defendants.** Members of the defense team  
5 may share and review the Protected Material with Defendants. A defendant residing at the  
6 Federal Detention Center (FDC) is permitted to review the Protected Material, consistent with  
7 the regulations established by the Bureau of Prisons, with or without counsel in a controlled  
8 environment at the FDC, but is prohibited from printing out, copying, or disseminating the  
9 discovery. Defendants on pretrial release are permitted to review the Protected Material at the  
10 offices of their counsel, but are prohibited from printing out, copying, or disseminating the  
11 discovery.

12       **5. Limits on Dissemination of Protected Materials.** Members of the defense team  
13 acknowledge that providing copies of the Protected Material to a defendant or other persons is  
14 prohibited, and agree not to duplicate or provide copies of the Protected Material to a defendant  
15 or other persons. This order does not limit employees of the United States Attorney's Office for  
16 the Western District of Washington from disclosing the Protected Material to members of the  
17 United States Attorney's Office, federal law enforcement agencies, witnesses, and the Court and  
18 defense as necessary to comply with the Government's discovery obligations.

19       **6. Future Production of Additional Protected Materials.** Additional types of  
20 discovery items may be deemed by the parties to constitute Protected Material upon agreement,  
21 or (if no agreement can be reached) by further order of the Court.

22       **7. No Waiver.** Nothing in this order should be construed as imposing any  
23 substantive discovery obligations on the Government that are different from those imposed by  
24 case law and Rule 16 of the Federal Rules of Criminal Procedure. The failure to designate any  
25 materials as provided in paragraph 2 shall not constitute a waiver of a party's assertion that the  
26 materials are covered by this Protective Order.

1           8.       **Use of Protected Material in Court.** Any Protected Material that is filed with the  
2 Court in connection with pre-trial motions, trial, or other matter before the Court, shall be filed  
3 under seal and shall remain sealed until otherwise ordered by this Court. This does not entitle  
4 either party to seal their filings as a matter of course. The parties are required to comply in all  
5 respects with the relevant local and federal rules of criminal procedure pertaining to the sealing  
6 of court documents.

7           9.       **Non-Termination.** The provisions of this Order shall not terminate at the  
8 conclusion of this prosecution. Furthermore, at the close of this case, defense counsel shall return  
9 the Protected Material, including all copies of the Protected Material, to the office of the United  
10 States Attorney, or otherwise certify that the material has been destroyed.

11          10.      **Violation of Order.** Any person who willfully violates this order may be held in  
12 contempt of court and may be subject to monetary or other sanctions as deemed appropriate by  
13 this Court.

14          11.      **Modification of Order.** Nothing in this Stipulation shall prevent any party from  
15 seeking modification of this Protective Order or from objecting to discovery that it believes to be  
16 otherwise improper. The parties agree that in the event that compliance with this Order makes it  
17 difficult for defense counsel to adhere to their Sixth Amendment obligations, or otherwise  
18 imposes an unworkable burden on counsel, defense counsel shall bring any concerns about the  
19 terms of the Order to the attention of the Government. The parties shall then meet and confer  
20 with the intention of finding a mutually acceptable solution. In the event that the parties cannot  
21 reach such a solution, defense counsel shall have the right to bring any concerns about the scope  
22 or terms of the Order to the attention of the Court by way of a motion.

23          12.      **Agreement to Provide Copies of Protected Material to Defendants.** Upon  
24 agreement of counsel for the Government, members of a defense team may provide copies of  
25 specific Protected Material, or redacted versions of such material, to a defendant. When seeking  
26 the Government's agreement to give such a copy to a defendant, members of the defense team

1 will identify with reasonable particularity, including (where available) the specific bates  
2 numbered pages and or recording descriptions, the specific material defense counsel proposes to  
3 give to the defendant. Unless expressly stated otherwise by the Government, copies of Protected  
4 Material to be provided to a defendant will continue to be Protected Material subject to all of the  
5 protections of the Court's Order, with the sole exception that a copy can be given only to a  
6 defendant (and not shared with anyone else outside the defense team). If counsel for the  
7 Government and counsel for the defendant cannot reach agreement on whether particular  
8 portions of the Protected Material or redacted versions of Protected Material should be given to  
9 the defendant under these conditions, defense counsel may raise the issue with the Court by way  
10 of a motion.

11       13.     **No Ruling on Discoverability or Admissibility.** This Protective Order does not  
12 constitute a ruling on the question of whether any particular material is properly discoverable or  
13 admissible and does not constitute any ruling on any potential objection to the discoverability of  
14 any material.

15       14.     **No Ruling on Timing of Production.** This Protective Order does not require the  
16 Government to provide particular discovery at a time or in a fashion inconsistent with applicable  
17 law.

18       15.     **Addition of Defendants after Entry of Order.** This Protective Order will cover  
19 additional defendants in this case so long as they agree to be bound by the terms of this  
20 Protective Order and so indicate that consent by the execution of a supplemental stipulation,  
21 which shall be filed as an addendum or supplement to this Protective Order.

22 The Clerk of the Court is DIRECTED to provide a filed copy of this Protective Order to the  
23 Coordinating Discovery Attorney (if appointed) and all counsel of record.

24 //

25 //

26 //

1 DATED this 13th day of November 2020.

2  
3  
4 

5 John C. Coughenour  
6 UNITED STATES DISTRICT JUDGE  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26